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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/689,721 08/12/96 FERRY

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MM42/0721

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TIGARD OR 97223

EXAMINER

LUEBKE, R

ART UNIT

PAPER NUMBER

2832

30

DATE MAILED:

07/21/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

08/689,721

Applicant(s)

Perry

Examiner

Renee S. Luebke

Group Art Unit

2832



☒ Responsive to communication(s) filed on Jun 25, 1999

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 7, 9, and 10 is/are pending in the application.

Of the above, claim(s) none is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 7, 9, and 10 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

1. Claim 7 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a ring which fits snugly around the recorder, does not reasonably provide enablement for such a ring with a fixed diameter. In fact, on page 2, at line 11, the specification specifically states that the ring is made from a resilient material and therefore would not have a fixed diameter. In addition, if the procured ring were of a fixed diameter that would fit snugly around the shaft, then one would be unable to insert a strap. To do so would make the space in the ring too small to fit at the required place on the instrument and to insert such a strap would render the fit of the ring on the recorder less than snug. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims.

2. Absent the new, contradictory statements, claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Williams. The method of assembling this device comprises procuring a strap 50, procuring a ring 20 and attaching the strap to the ring at 40. The strap is suitable for hanging on a user's neck. The ring is a size (about 1" inside diameter to hold a quarter) that fits snugly around some part of the shaft of a recorder. Further, the device is suitable for suspending a recorder from a user's neck. The use of a knot is well known for attaching a flexible strap to an item in the absence of another attachment means. Such an arrangement reduces the number of parts needed. Therefore, it would have been obvious to attach the strap of Williams to the ring with a knot in order to eliminate the additional attachment parts.

Applicant argues that Williams does not teach how to make the device shown. However, the claimed steps of assembling merely state that two parts are put together. Such a "method" is inherent in assembling the parts shown by Williams, since the strap

is shown to be attached to the ring. Applicant's steps are so broad as to encompass any manner of assembling the device of Williams.

3. Claims 9 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 9 contradicts the specification. The juncture C is the joint between the mouthpiece B and the fingering piece D. Therefore, the diameter cannot increase from the juncture to the mouthpiece. Nor can a diameter between the juncture point and the mouthpiece be determined.

4. Claims 9 and 10 are also rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification. In particular, the specification does not describe a step or method of "determining an operating diameter" as required by claim 9.

5. Absent the objectionable limitations discussed in paragraphs 3 and 4 above, it appears that claims 9 and 10 would also have been rejected as unpatentable in view of Williams for the previously discussed reasons.

6. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP §706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. **It is suggested that responses to this final action be faxed to:**

(703) 308-7722, 308-7724 or 308-7382

This facsimile transmission service for formal amendments is provided as part of Technology Center 2800's After Final program to improve communication with our customers. Use of this program reduces processing time, will result in more timely responses by the Office and should result in fewer requests for extensions of time. Please refrain from sending a confirmation copy, as noted in 37 CFR 1.6(d) and 1.8(b).

For formal communications, please mark "EXPEDITED PROCEDURE"

For informal or draft communications please clearly label "PROPOSED" or "DRAFT"

Alternatively, responses may be mailed to:

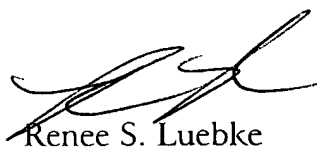
Box AF

Assistant Commissioner for Patents
Washington, DC 20231

Hand-delivered responses should be brought to:

Crystal Plaza 4, Fourth Floor (Receptionist)
2201 South Clark Place, Arlington, Virginia.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mrs. Renee Luebke at (703) 308-1511. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Michael Gellner, can be reached at (703) 308-1721.



Renee S. Luebke
Primary Patent Examiner
July 20, 1999